

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

5 Case No. 19-cr-00548

6 -vs-

7 GABRIEL LETIZIA, JR.,

8 Defendant.

9 -----x  
10 United States Courthouse  
11 White Plains, New York

12 May 4, 2021  
13 12:00 p.m.

14 \*\* VIA VIDEO AND TELECONFERENCE \*\*

15 B e f o r e:

16 HONORABLE PAUL E. DAVISON

17 Magistrate Judge

18 A P P E A R A N C E S:

19 AUDREY STRAUSS

20 United States Attorney for the  
21 Southern District of New York

22 JEFFREY COFFMAN

23 JAMES F. McMAHON

24 OLGA I. ZVEROVICH

25 Assistant United States Attorneys

OFFICES OF FREDERICK P. HAFETZ

FREDERICK P. HAFETZ

Attorney for Defendant

GEORGE WEINBAUM

Attorney for Defendant

1 THE DEPUTY CLERK: Good afternoon. This is the matter  
2 of USA versus Letizia, 19-cr-548. The Honorable Paul Davison  
3 presiding.

4 Counsel, please state your name for the record,  
5 starting with the government.

6 MR. COFFMAN: Good morning, Your Honor. Good  
7 afternoon, I should say. This is Jeffrey Coffman for the United  
8 States with my colleagues James McMahon and Olga Zverovich.

9 THE COURT: Good afternoon, counsel.

10 Defense counsel, can you identify yourselves?

11 MR. WEINBAUM: For Mr. Letizia, George Weinbaum. Good  
12 afternoon, Your Honor.

13 THE COURT: Good afternoon, Mr. Weinbaum.

14 MR. HAFETZ: And Fred Hafetz, Your Honor, for  
15 Mr. Letizia as well.

16 THE COURT: Okay. And I see we have Darby, the court  
17 reporter. Thank you for your assistance today.

18 Mr. Letizia, can you hear me?

19 THE DEFENDANT: Yes, I can, Your Honor.

20 THE COURT: Okay. Could you just wave your hand so  
21 I'm sure who I am talking to? Perfect.

22 Okay. Mr. Letizia, we are still in the midst of the  
23 Covid-19 pandemic, and as a result, we are conducting this  
24 proceeding remotely. I want to make sure that that's acceptable  
25 to you. Your counsel, you, the prosecutor, and the Court are

1 all connected on a video link on the TEAMS platform. In  
2 addition, the audio component of this conference is being  
3 conducted on an AT&T conference line, which is open to the  
4 public and the press on a listen-only basis.

5 Now, Mr. Letizia, under normal circumstances, we would  
6 all be together in a courtroom, but to ensure everyone's safety,  
7 and to avoid the possible spread of the virus, we are conducting  
8 this proceeding remotely.

9 (Interruption)

10 THE COURT: Mr. Letizia, I have received a copy of a  
11 written consent form signifying your consent to conduct this  
12 proceeding via videoconferencing and/or teleconferencing, and  
13 that form is signed by your attorney, Mr. Hafetz. Have you  
14 received a copy of that form?

15 THE DEFENDANT: Yes, I have, Your Honor.

16 THE COURT: And did you read it?

17 THE DEFENDANT: Yes, I did.

18 THE COURT: And are you consenting to proceed remotely  
19 today?

20 THE DEFENDANT: Yes, I am.

21 THE COURT: And do I have your permission to sign the  
22 written consent form on your behalf?

23 THE DEFENDANT: Yes. Would you, please?

24 THE COURT: Very well. Then the written consent is  
25 accepted for filing, and we will proceed remotely under Rule 11.

1 Mr. Letizia, this is not a trial -- withdrawn.

2 This is not a trial. I am told you have decided to  
3 enter guilty pleas in this case, so we are here to make sure  
4 that you are aware of all of your rights and that any waiver of  
5 those rights is knowing and voluntary.

6 In addition, the Court has to make certain there is a  
7 factual basis for your plea of guilty, and it's important for  
8 you to understand that the Court cannot accept your plea unless  
9 the Court is satisfied that you are, in fact, guilty. Do you  
10 understand?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: All right. Mr. Letizia, if at any point  
13 you don't hear me or understand what I say, I want you to  
14 interrupt me. I will repeat myself. I will try to explain what  
15 I said. I will give you an opportunity to consult with your  
16 attorneys, but it's very important that you hear and understand  
17 everything that goes on here this afternoon. Will you do that?  
18 Will you interrupt me if you don't understand something?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Excellent.

21 Mr. Letizia, you have an absolute right to be  
22 represented by a lawyer at this and every stage of the  
23 proceedings against you, and you have the right to consult your  
24 attorneys before you answer any questions. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I recommend that you take advantage of  
2 that right as necessary and consult with your attorneys if you  
3 need to. We are not in any hurry here this afternoon. Okay?

4 THE DEFENDANT: Yes. Thank you.

5 THE COURT: Mr. Letizia, if you were to become unable  
6 to afford your attorneys' services, you would be entitled to  
7 apply to the Court for court-appointed counsel, and if the Court  
8 was satisfied that you could not afford to hire a lawyer and --  
9 well, if the Court was persuaded that you could not afford to  
10 hire a lawyer, under those circumstances, the Court would  
11 appoint an attorney to represent you without cost to you. Do  
12 you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Ms. Brown, would you place Mr. Letizia  
15 under oath or affirmation?

16 THE DEPUTY CLERK: Sure. Mr. Letizia, please raise  
17 your right hand.

18 GABRIEL LETIZIA, JR., having been duly sworn, testified as  
19 follows:

20 THE DEFENDANT: Yes, I do.

21 THE DEPUTY CLERK: Thank you. Put your hand down.

22 THE COURT: Mr. Letizia, you are now under oath. That  
23 means if you knowingly make a false statement during this  
24 proceeding, you could be prosecuted for perjury. You could face  
25 up to five years in prison and a \$250,000 fine if you were

1 convicted for that.

2 For the record, what's your full name?

3 THE DEFENDANT: Gabriel J. Letizia, Junior.

4 THE COURT: How old are you, Mr. Letizia?

5 THE DEFENDANT: I am 71.

6 THE COURT: Do you read, write, speak and understand  
7 English?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How far did you go in school?

10 THE DEFENDANT: I went beyond an associate's degree.

11 THE COURT: Sir, have you ever been hospitalized or  
12 treated for narcotic or alcohol addiction?

13 THE DEFENDANT: No, sir.

14 THE COURT: Within the past 24 hours, have you used or  
15 taken any drugs, marijuana, alcohol, medication or pills of any  
16 kind?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you feeling clear in your head this  
19 afternoon?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, Mr. Letizia, have you received a copy  
22 of the three-count Superseding Information, which has been filed  
23 with the Court?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: That Superseding Information charges you

1 with three counts, also including a forfeiture allegation, and  
2 it's -- for the record, it's S2-19-cr-548. You have seen that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And have you read it over with the  
5 assistance of your attorney?

6 THE DEFENDANT: Yes, I have.

7 THE COURT: All right. Ms. Brown, are you able to  
8 arraign Mr. Letizia on the Waiver of Indictment?

9 THE DEPUTY CLERK: Yes.

10 THE COURT: Can you go ahead and do that?

11 THE DEPUTY CLERK: Sure. Give me one second. Let me  
12 get the -- I'm sorry. Let me get the form.

13 THE COURT: You know what? It's okay. I will do it.  
14 Mr. Letizia, did you sign this Waiver of Indictment?

15 THE DEFENDANT: Yes, I did, Your Honor.

16 THE COURT: Did you discuss it with your attorneys  
17 before you signed it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand you are under no  
20 obligation to waive indictment?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that if you do not waive  
23 indictment, the government will present your case to a grand  
24 jury, which might or might not indict you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand what a grand jury is?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Very well. The written Waiver of  
4 Indictment is accepted and will be placed in the court file.

5 Counsel, does Mr. Letizia waive the public reading of  
6 the Felony Information?

7 MR. HAFETZ: Yes, Your Honor.

8 MR. WEINBAUM: Yes.

9 THE COURT: The public reading is waived, and of  
10 course, this case has previously been assigned to the Honorable  
11 Kenneth M. Karas.

12 Mr. Letizia, this proceeding is referred to as a plea  
13 allocution. I want you to understand that you have the absolute  
14 right to have this plea allocution held before a United States  
15 district judge, in this case the Honorable Kenneth M. Karas, to  
16 whom this case has been assigned. It is Judge Karas, the  
17 district judge, who will impose the sentence in this case. I am  
18 a United States magistrate judge. If you consent and agree, I  
19 will conduct the plea allocution here this afternoon, and I will  
20 then make a report to Judge Karas in which I will recommend  
21 whether or not Judge Karas should accept your plea of guilty. I  
22 will make that recommendation based on the information that  
23 comes out during today's proceeding. Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that you have an



1 absolute right to have this plea allocution conducted before a  
2 United States district judge?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you consent and agree that I should  
5 conduct the plea allocution this afternoon?

6 (Reporter clarification)

7 THE COURT: Okay. Mr. Letizia, do you consent and  
8 agree that I should conduct the plea allocution here this  
9 afternoon?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. I have been provided with a  
12 Written Consent to Proceed Before a United States Magistrate  
13 Judge on a Felony Plea Allocution. The copy in my hands has  
14 been signed by Mr. Hafetz, but not by Mr. Letizia.

15 Mr. Letizia, did you see the copy of this document?

16 THE DEFENDANT: Yes, I did.

17 THE COURT: Did you read it over with your attorney?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And do you authorize me to sign the  
20 written consent on your behalf?

21 THE DEFENDANT: Yes, I do, sir.

22 THE COURT: Did anyone threaten you or coerce you or  
23 promise you anything in order to get you to agree to the signing  
24 of that consent form?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you consenting freely and voluntarily?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Counsel, do either of you know  
4 of any reason why this Waiver and Consent to Proceed on a Plea  
5 Allocution Before United States Magistrate Judge should not be  
6 accepted? Mr. Coffman?

7 MR. COFFMAN: No, Your Honor.

8 THE COURT: Defense counsel?

9 MR. WEINBAUM: No, Your Honor.

10 THE COURT: All right. I find that Gabriel Letizia,  
11 Jr. is fully competent and capable of waiving his right to  
12 appear before a United States district judge in order to enter  
13 his plea of guilty. I, therefore, accept the consent form,  
14 which will be signed and placed in the court record.

15 Mr. Letizia, do you understand that your right to be  
16 represented by a lawyer continues through every stage of the  
17 proceeding, including trial and appeal, and that you have this  
18 right whether or not you choose to plead guilty to these  
19 offenses?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you had an adequate opportunity to  
22 consult with your attorneys about your case and especially about  
23 your decision to plead guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you satisfied with the services which

1 your attorneys have provided to you in this case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you told your attorneys everything  
4 you know about the case?

5 THE DEFENDANT: Yes.

6 THE COURT: Now, I have in my hand a plea agreement in  
7 letter form. It is dated November 16, 2020. It's addressed to  
8 Mr. Hafetz in reference to this case, and appears to have been  
9 countersigned by Mr. Letizia and Mr. Hafetz on November 23rd and  
10 November 24th, 2020, respectively.

11 Mr. Coffman, is this the operative plea agreement?

12 MR. COFFMAN: That is correct, Your Honor.

13 THE COURT: And --

14 MR. COFFMAN: I would note there is an Exhibit A to  
15 the agreement --

16 THE COURT: Which is a Consent Order of Forfeiture.

17 MR. COFFMAN: That's correct, Your Honor.

18 THE COURT: And that has just been forwarded to the  
19 Court.

20 MR. COFFMAN: With respect to that, Your Honor, it has  
21 been signed by Mr. Letizia, but it has not yet been signed by  
22 Mr. Hafetz.

23 MR. HAFETZ: I will send that in later today, my  
24 signed copy, Your Honor.

25 THE COURT: All right. Mr. Letizia, did you read this

1 November 16, 2020, plea agreement?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And have you gone over the plea agreement  
4 with your attorneys?

5 THE DEFENDANT: Yes.

6 THE COURT: I am sorry. I didn't hear you.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And that is your signature which appears  
9 on the last page of that agreement?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did you read the entire agreement before  
12 you signed it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And does that include the consent order of  
15 forfeiture, which is incorporated by reference?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you signed that as well?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Defense counsel, did you review each and  
20 every part of the plea agreement with your client?

21 MR. HAFETZ: Yes, we did, Your Honor.

22 THE COURT: Mr. Letizia, are you satisfied that you  
23 understand this entire plea agreement?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you have any questions either for your

1 attorneys or for me about what the plea agreement says?

2 THE DEFENDANT: No, sir.

3 THE COURT: Does this plea agreement contain the  
4 complete understanding between you and the government in  
5 connection with this case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that anything which is  
8 not set forth in the written plea agreement or placed on the  
9 record at this time is not going to be binding on the outcome of  
10 your case?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Coffman, is there anything beyond the  
13 written plea agreement the Court should be aware of?

14 MR. COFFMAN: No, Your Honor.

15 THE COURT: Defense counsel, any other agreement the  
16 Court should know about?

17 MR. WEINBAUM: No, Your Honor.

18 THE COURT: Mr. Letizia, did you sign the plea  
19 agreement freely and voluntarily?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did anyone force you or coerce you or  
22 threaten you or promise you anything other than what is set  
23 forth in the written plea agreement itself in order to get you  
24 to sign the plea agreement?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. At this time, Mr. Letizia, the  
2 law requires me to advise you of the maximum possible penalties  
3 to which you expose yourself by pleading guilty to these  
4 charges. This is the worst case scenario; you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: First, Count One of the Felony Information  
7 charges you with participating from in or about 1987 through in  
8 or about April 2017, in a conspiracy to defraud customers of AMA  
9 Laboratories. Do you understand that charge?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you are convicted as charged under  
12 Count One, whether that's by pleading guilty or being convicted  
13 by a jury after a trial, you face a maximum term of imprisonment  
14 of five years; you face a maximum term of supervised release of  
15 three years; you face a maximum fine of the greater of \$250,000  
16 or twice the gain or loss resulting from the offense; and you  
17 also face a \$100 special assessment, which is mandatory.

18 Count Two of the Felony Information charges you with  
19 willfully causing a misbranded drug to be introduced into  
20 interstate commerce from in or about January 2014 through at  
21 least in or about April 2017. Do you understand that charge?

22 THE DEFENDANT: Yes.

23 THE COURT: If you are convicted as charged under  
24 Count Two, you face a maximum term of imprisonment of one year,  
25 a maximum term of supervised release of one year, a maximum fine

1 of the greater of \$100,000 or twice the gain or loss resulting  
2 from the offense, and a \$25 mandatory special assessment.

3 Count Three of the information charges you again with  
4 willfully causing a misbranded drug to be introduced into  
5 interstate commerce, here between December 2015 through in or  
6 about April 2017. Do you understand that charge?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And if you are convicted as charged under  
9 Count Three, you face a maximum term of imprisonment of one  
10 year, a maximum term of supervised release of one year, a  
11 maximum fine of the greater of \$100,000, or twice the gain or  
12 loss resulting from the event, and another mandatory special  
13 assessment of \$25.

14 Therefore, if you are convicted under all three counts  
15 in the Felony Information, you face a maximum term of  
16 imprisonment of seven years. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, Mr. Letizia, with regard to any term  
19 of supervised release, I have to caution you that if you are  
20 sentenced to a term of imprisonment, even if you are sentenced  
21 to the maximum term of imprisonment, and if you are also  
22 sentenced to a term of supervised release, and if you then  
23 violate the conditions of your supervised release, under those  
24 circumstances, you could be sentenced to an additional term of  
25 imprisonment for violating the conditions of your supervised

1 release. In this case, the additional prison term would be two  
2 years' imprisonment.

3 Also, if you violate the conditions of your supervised  
4 release, you will not receive credit for any time you already  
5 served in prison or for time you served on supervised release.  
6 Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, what that means here, Mr. Letizia, is  
9 if, for example, you are sentenced to a term of imprisonment on  
10 Count One, five years, which is the maximum, and you serve all  
11 five, and you then go out on supervised release, you violate  
12 supervised release, under those circumstances, the Court can  
13 send you back to prison without a jury trial, even though you  
14 had already served the maximum term. Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You are also exposed to the possibility of  
17 an order of forfeiture or restitution.

18 Mr. Coffman, I take it there is some agreement in that  
19 regard?

20 MR. COFFMAN: There is an agreement, Your Honor, with  
21 respect to forfeiture in the amount of \$46,200,000 as set forth  
22 in the plea agreement and the consent to an order of forfeiture;  
23 and of course, there is also the possibility of restitution,  
24 although there has been no agreement as yet on that.

25 THE COURT: Does the government contemplate seeking



1 restitution above and beyond that \$46 million figure?

2 MR. COFFMAN: The government does intend to assist  
3 victims in recovery and restitution, and I do expect that with  
4 respect to the question about whether it will be beyond that 46  
5 or \$42,600,000 number, it's unsure that there will be enough to  
6 satisfy both, but we do not --

7 (Interruption)

8 MR. COFFMAN: -- get about whether there is going to  
9 be restitution beyond --

10 (Interruption)

11 (Reporter clarification)

12 MR. COFFMAN: Sure. There is no agreement on the  
13 question whether there will be more restitution beyond the  
14 \$42,600,000.

15 THE COURT: Thank you.

16 Mr. Letizia, do you understand that these are all  
17 possible sentences that could be imposed following a plea of  
18 guilty in this case?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you a United States citizen?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I'm sorry. Could you respond again?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you a citizen of any other country?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. Mr. Letizia, I asked you the  
2 question in part because if you were not a United States  
3 citizen -- in fact, I get ahead of myself. Are you a citizen by  
4 birth or by naturalization?

5 THE DEFENDANT: By birth, sir.

6 THE COURT: All right. I ask you these questions in  
7 part because if you were not a United States citizen, or if you  
8 were a citizen by naturalization, a conviction in this case  
9 would adversely affect your immigration or naturalization  
10 status. We don't need to discuss those consequences any further  
11 because you are a citizen.

12 Do you understand that you are pleading guilty here to  
13 a felony offense, and that a felony conviction may deprive you  
14 of certain valuable civil rights, which might include the right  
15 to vote, the right to hold public office, the right to serve on  
16 a jury, the right to possess any type of firearm, including  
17 rifles and shotguns, the right to be considered for certain  
18 types of employment, or to be bonded or to serve in the U.S.  
19 military, and the right to possess or obtain certain government-  
20 issued licenses, including licenses that may be required in  
21 certain professions and occupations. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that because this  
24 offense involved fraud or other intentionally deceptive  
25 practices, the Court could order you to provide notice

1 (interruption) to victims of the offense?

2 (Reporter clarification)

3 THE COURT: Do you understand, sir, that because this  
4 offense involves fraud or other intentionally deceptive  
5 practices, the Court has authority to order you to provide  
6 notices of your conviction to victims of the offense?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Letizia, do you understand these are  
9 all possible legal consequences of a guilty plea in this case?

10 THE DEFENDANT: Yes, sir. I do.

11 THE COURT: Do you understand that the United States  
12 Sentencing Commission has published guidelines for judges to  
13 follow in determining the appropriate sentence to impose in a  
14 criminal case?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you also understand that the guidelines  
17 are not mandatory, but must be considered by the Court, along  
18 with other factors and other information, when the Court  
19 determines the appropriate sentence?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you and your attorneys talked about  
22 how the sentencing guidelines would be calculated in your case?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, the plea agreement that we talked  
25 about a couple of minutes ago includes a stipulated guideline

1 range of between 135 and 168 months' imprisonment, but also  
2 indicates that because of the statutory maximum, the guideline  
3 sentence is 84 months. The agreement also indicates that  
4 subject to your ability to pay, the fine range in this case is  
5 between \$35,000 and \$350,000. You are aware of those ranges?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that these ranges  
8 represent nothing more than an understanding between you and  
9 your lawyers and government counsel, and that these ranges are  
10 not binding on Judge Karas when he imposes sentence in this  
11 case?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that Judge Karas will  
14 consider the guidelines, but will impose a sentence in  
15 accordance with the applicable statutes, which in this case  
16 means the only thing you know for sure is that a prison term  
17 will not exceed seven years?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that Judge Karas will  
20 not be able to determine the appropriate sentence to impose  
21 until after a presentence report has been prepared and after you  
22 and your attorney, as well as government counsel, have had an  
23 opportunity to challenge the facts reported in the presentence  
24 report, as well as the calculation of the sentencing guideline  
25 range and any sentence recommendations contained in that report?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you also understand that if there are  
3 any objections to the presentence report, the Court will rule on  
4 those objections, and if necessary, the Court will conduct a  
5 hearing to determine what information is pertinent to the  
6 calculation of your sentence?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Coffman, do we have an appeal waiver  
9 in this agreement?

10 MR. COFFMAN: There is an appeal waiver, Your Honor.

11 THE COURT: Can I ask you to summarize it for the  
12 record?

13 MR. COFFMAN: Yes, Your Honor. The plea waiver is set  
14 forth in the agreement on page 4, and it provides that the  
15 defendant will not file an appeal directly or bring a collateral  
16 challenge so long as the sentence is within the stipulated  
17 guidelines range of 135 to 168 months.

18 THE COURT: That's actually not what it says.

19 MR. COFFMAN: Within or below that. I'm sorry, Your  
20 Honor. I don't know where those numbers came from.

21 Will not file a direct appeal or bring a collateral  
22 challenge so long as the sentence is within or below the  
23 stipulated guidelines sum of 84 months.

24 THE COURT: Thank you.

25 Mr. Letizia, do you understand that one effect of the

1 plea agreement that you have entered into with the government is  
2 that you are giving up rights you might otherwise have had to  
3 appeal or otherwise challenge any sentence of imprisonment that  
4 does not exceed 84 months?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you also understand you are agreeing  
7 not to appeal or otherwise challenge any term of supervised  
8 release that does not exceed three years, any fine that does not  
9 exceed \$350,000, and any order of forfeiture that does not  
10 exceed \$46,200,000?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Defense counsel, have you reviewed with  
13 your client the first full paragraph on page 5 of the agreement  
14 commonly referred to as the *Brady* waiver?

15 MR. HAFETZ: Yes, Your Honor.

16 THE COURT: Are you satisfied that Mr. Letizia  
17 understands the consequences of that particular paragraph?

18 MR. HAFETZ: Yes.

19 THE COURT: Mr. Letizia, do you also understand that  
20 if you didn't agree with or are disappointed by Judge Karas's  
21 sentencing decision, that will not give you a basis to withdraw  
22 your plea of guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that parole has been  
25 abolished in the federal system, and if you are sentenced to a

1 term of imprisonment, you will not be eligible for early release  
2 on parole?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand you do not have to plead  
5 guilty and that you have an absolute right to plead not guilty  
6 and to have this case go to trial by judge or by jury?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that if you choose to  
9 plead not guilty, you are entitled to have a speedy and public  
10 trial of your case?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that at any such trial,  
13 you would be entitled to the presumption of innocence, and that  
14 the presumption would remain with you until the government  
15 proved each and every element of the crimes charged beyond a  
16 reasonable doubt to the satisfaction of the judge if it's a  
17 judge trial, or to the unanimous satisfaction of the jury if  
18 it's a jury trial?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: At any such trial, you would have the  
21 right, with the assistance of your lawyer, to confront and  
22 cross-examine the witnesses against you. You would have the  
23 right to call witnesses to testify on your behalf, and to have  
24 subpoenas issued by the Court to compel witnesses to come and  
25 testify. You would also have the right to testify at your

1 trial, but you could not be forced to testify; and if you  
2 decided not to testify, your decision to remain silent could not  
3 be held against you. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: At your trial, you would also have the  
6 right I described earlier to the assistance of a lawyer and to  
7 have a lawyer appointed to represent you without fee if you  
8 could not afford counsel. Do you understand that if you plead  
9 guilty to these charges, you will give up your right to a trial,  
10 and except for the right to a lawyer, you will also give up all  
11 the other rights that I have explained?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you get that, Darby?

14 THE REPORTER: I did. Thanks, Your Honor.

15 THE COURT: Mr. Letizia, have you clearly heard and  
16 understood everything I've said to you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions for me or for  
19 your lawyers about anything I have said or anything I have asked  
20 you?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Then turning to Mr. Coffman,  
23 can I ask you to outline the elements of the offenses to which  
24 this defendant is pleading guilty, and then tell me what facts  
25 the government would be prepared to prove at trial to establish



1 those elements?

2 MR. COFFMAN: Certainly, Your Honor. As to Count One,  
3 if this matter were to proceed to trial, the government would  
4 prove the following elements beyond a reasonable doubt: Count  
5 One is conspiracy to commit wire fraud.

6 First, the government would prove that there was an  
7 agreement between two or more people, the unlawful objective of  
8 the agreement being to commit wire fraud.

9 Second, that the defendant knowingly and willfully  
10 entered into that agreement.

11 And third, that in furtherance of the conspiracy, one  
12 member of the conspiracy knowingly committed at least one of the  
13 overt acts charged in the Superseding Information.

14 Your Honor, the government would not have to prove  
15 that the substantive crime of wire fraud was, in fact,  
16 committed, but rather that it was the object of the conspiracy,  
17 but nevertheless, I will set forth the elements of wire fraud  
18 because it was the object of the conspiracy. Those are: First,  
19 that the defendant executed a scheme and artifice to defraud and  
20 for obtaining money and property by materially false pretenses,  
21 representations and promises.

22 Second, the defendant knowingly and willfully  
23 participated in the scheme or artifice to defraud with knowledge  
24 of its fraudulent nature and with specific intent to defraud.

25 And third, that there was the use of interstate wires

1 in furtherance of the fraud.

2 The last Counts Two and Three, which charges --

3 (Reporter clarification)

4 MR. COFFMAN: Okay. As to Counts Two and Three, which  
5 charge misbranding, that's --

6 (Interruption)

7 THE COURT: Just go ahead, Mr. Coffman.

8 MR. COFFMAN: As to Count Two and Three, the  
9 government would prove the following two elements beyond a  
10 reasonable doubt: First, that the defendant caused to be  
11 introduced and delivered for introduction into interstate  
12 commerce a drug within the meaning of Federal 21 United States  
13 Code Section 321(g)(1); and second, that the drug was misbranded  
14 in that its drug label failed to reveal material facts as  
15 charged in the Superseding Complaint.

16 The government would also have to prove by a  
17 preponderance of the evidence that venue in the Southern  
18 District of New York is proper.

19 The government, Your Honor, will prove the following  
20 facts at trial: So through beginning in or about 1987 and  
21 continuing to April 2017, the defendant willfully and knowingly  
22 conspired with others to commit wire fraud and caused the  
23 introduction of mislabeled drugs into interstate commerce.

24 (Reporter clarification)

25 MR. COFFMAN: Your Honor, the government would prove

1 that the defendant was the owner and executive director of AMA  
2 Laboratories in Rockland County, New York; that AMA tested the  
3 efficacy and safety of cosmetics, sunscreens and other products  
4 on numbers of volunteer panelists in exchange for fees paid by  
5 consumer products companies.

6           From at least in or about 1987 to in or about  
7 April 2017, the defendant and his employees of the laboratory,  
8 acting at his direction, tested products on materially lower  
9 numbers of panelists than the number specified by the  
10 laboratory's customers. The defendant, and employees acting at  
11 his direction, falsely represented to the laboratory's customers  
12 that they had tested the products on the numbers of --

13           (Interruption)

14           MR. COFFMAN: -- testified that a laboratory tested.  
15 The defendant and other laboratory employees also made  
16 materially false and misleading statements about the results of  
17 the tests to AMA's customers defrauding those customers of  
18 approximately \$46,200,000, the fees the customers paid for the  
19 testing.

20           The defendant and other laboratory employees sent  
21 those reports via interstate wire communications, including by  
22 email, to customers throughout the United States and elsewhere.  
23 For example, the defendant caused AMA employees acting under his  
24 direction to deliver to AMA customers on or about December 4th,  
25 2013, and January 27, 2015, reports that falsely reflected the

1 results of AMA testing of two sunscreen products purportedly on  
2 a panel of 20 subjects, as well as the measured SPF levels of  
3 those sunscreens as charged in Counts Two and Three of the  
4 Superseding Information.

5           The customers who requested this testing required the  
6 SPF testing on panels of 20 subjects in order to ensure the  
7 reliability of AMA's test results for purposes of accurately and  
8 lawfully labeling the SPF level of the sunscreen products. The  
9 defendant knowing that the report AMA sent to the customers was  
10 false in that testing had not been performed on the whole panel  
11 as requested and paid for by AMA's customers. In so doing, the  
12 defendant knowingly caused AMA's customers to market and sell to  
13 consumers in the U.S. and elsewhere, sunscreen, a drug within  
14 the meaning of the Food, Drug and Cosmetics Act with labels that  
15 failed to reveal material facts in that the labels on these  
16 products stated that the SPF level of the sunscreen was 50 with  
17 no indication on the label that laboratory testing of the panel  
18 and paid for by AMA customers had not been performed.

19           The government's evidence as to venue, Your Honor,  
20 would include, among other things, evidence that AMA and the  
21 defendant were physically located in and operated from New City  
22 in Rockland County in the Southern District of New York.

23           Your Honor, the government's evidence would include  
24 documentary evidence, including email communications with  
25 victims, and fraudulent reports and panelist data seized from

1 AMA, as well as testimony from other AMA employees regarding  
2 these practices, and testimony from victim companies.

3 Thank you.

4 THE COURT: Thank you, Mr. Coffman.

5 Mr. Letizia, did you hear what the assistant U.S.  
6 attorney said?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Sir, at this time, how do you  
9 wish to plead to Count One of the Superseding Information  
10 charging you with conspiracy to commit wire fraud?

11 THE DEFENDANT: Guilty.

12 THE COURT: At this time, how do you wish to plead to  
13 Count Two of the Felony Information charging you with  
14 misbranding?

15 THE DEFENDANT: Guilty.

16 THE COURT: And how do you wish to plead to Count  
17 Three of the Felony Information, also charging you with  
18 misbranding?

19 THE DEFENDANT: Guilty.

20 THE COURT: Has anyone threatened you or coerced you  
21 or pressured you improperly in order to get you to plead guilty  
22 to these charges?

23 THE DEFENDANT: No, sir.

24 THE COURT: Has anyone made any promises to you, other  
25 than what is set forth in the written plea agreement, in order

1 to persuade you to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anyone made any specific promise to  
4 you about what the sentence of the Court will be?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right, then. Mr. Letizia, at this  
7 time, the law requires me to ask you to tell me in your own  
8 words what you did that makes you guilty of these offenses.  
9 Let's begin with Count One, the conspiracy to commit wire fraud.

10 THE DEFENDANT: During the time period from 1987  
11 through 2017, I directed employees to test customer products at  
12 materially lower numbers than numbers requested by the customers  
13 of the laboratory of which I was owner and executive director.  
14 In furtherance of this activity, I caused reports to be  
15 delivered to customers which overstated the number of customers  
16 tested on SPF level in their sunscreen products.

17 THE COURT: And did you agree with other people to  
18 jointly engage in these activities?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And is it a fact that your base of  
21 operations was New City, New York in Rockland County?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And this went on between 1987 and about  
24 April 2017?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And is it a fact that as part of this  
2 scheme, the falsified results of this testing would be  
3 transmitted to customers via email?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And in terms of overt acts, on or about  
6 December 4, 2013, you caused a laboratory employee to deliver a  
7 report entitled "Evaluation of Sun Protection by SPF  
8 Determination (FDA) Static" that falsely purported to reflect  
9 the results of laboratory testing of that sunscreen on a panel  
10 of 10 subjects?

11 THE DEFENDANT: I'm sorry, sir. Could you please  
12 repeat that question?

13 THE COURT: Is it a fact that -- and this is with  
14 reference to the overt act alleged in paragraph 5a. on page 3 of  
15 the Felony Information -- is it a fact that on or about  
16 December 4, 2013, you caused a laboratory employee to deliver to  
17 a client company a report entitled "Evaluation of Sun Protection  
18 by SPF Determination (FDA) Static" that falsely purported to  
19 reflect the results of the laboratory testing of that sunscreen  
20 on a panel of 10 subjects?

21 THE DEFENDANT: I have to read it. This is the one.  
22 December 4, 2013. In December of 2013, I caused a laboratory  
23 employee to deliver to Apex International, Incorporated --

24 MR. HAFETZ: Excuse me, Your Honor.

25 Mr. Letizia, the judge is reading from page 3 from the

1 Information, paragraph a. on that page. Just take a look at it  
2 for a minute. It's a reference to December 4th, 2013. He just  
3 read these words. Just take a look at it.

4 THE DEFENDANT: Then the answer is yes, sir.

5 THE COURT: You did do that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: On or about that date?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Turning to Count Two, which is  
10 misbranding. What did you do that makes you guilty of this?

11 THE DEFENDANT: Count Two, approximately  
12 November 2013, the laboratory entered into a contract with Apex  
13 International to evaluate sunscreen effectiveness of an Apex  
14 product on a panel of 10 subjects. I knew the company required  
15 testing on 10 subjects in order to ensure the reliability of the  
16 lab's test results for the purpose of Apex accurately labeling  
17 the sun protection process of Babyganics Sunscreen.

18 THE COURT: And did you cause an employee to falsely  
19 report the testing of that --

20 MR. HAFETZ: I am sorry. I beg your pardon.

21 Mr. Letizia, did you finish your statement with regard  
22 to Count Two?

23 THE DEFENDANT: Okay. Okay. No. No.

24 In December of 2013, I caused a laboratory employee to  
25 deliver to Apex International Incorporated Babyganics Sunscreen,



1 a report which falsely overstated the number of subjects tested  
2 for SPF level of sunscreen. During the period from January 2014  
3 through April of 2017, I directed reports to be delivered to  
4 Apex International Babyganics Sunscreen, which caused the  
5 customer's market -- to market misbranded drugs. The Babyganics  
6 Sunscreen label failed to reveal the product had not been tested  
7 on the number of persons material to Apex International  
8 Incorporated's Babyganics Sunscreen's representation as to SPF  
9 50.

10 THE COURT: And again, you were operating from New  
11 City in Rockland County?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And what did you do with regard to Count  
14 Three, which is misbranding in 2015 to 2017?

15 THE DEFENDANT: In Count Three. In January 2015, I  
16 caused a laboratory employee to deliver to Carefree Skin Care  
17 Rubber Ducky Sunscreen a report which falsely overstated the  
18 number of subjects tested for SPF levels of Rubber Ducky  
19 Sunscreen. And during the time period from December 2015 to  
20 April 2017, I caused reports to be delivered to Carefree Sun  
21 Care -- I'm sorry -- Carefree Skin Care Rubber Ducky Sunscreen,  
22 which caused it to misbrand drugs in that Carefree Skin Care's  
23 Rubber Ducky Sunscreen's label failed to reveal that the product  
24 had not been tested on the number of persons material to  
25 Carefree Skin Care's Rubber Ducky Sunscreen representation as to

1 SPF 50.

2 THE COURT: Did you commit these acts that you have  
3 just described knowingly and willfully?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you know it was against the law to do  
6 what you were doing?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Is there anything else which  
9 either counsel -- (phone interruption) -- believes the Court  
10 needs to elicit from Mr. Letizia before making the  
11 recommendation contemplated by Rule 11? Mr. Coffman?

12 MR. COFFMAN: Your Honor, I think it was thorough, but  
13 I believe the defendant may have misspoke with respect to Count  
14 One. I think I heard you say the report overstated the number  
15 of customers, but I think you meant the report caused to be sent  
16 to customers overstated the numbers of the panelists on which  
17 the products were tested.

18 THE COURT: Mr. Letizia, is that correct? The reports  
19 that your company sent to a customer overstated the number of  
20 panelists on whom the product had been tested?

21 THE DEFENDANT: Yes. Forgive me. That should be  
22 panelists, not customers. So it should read the reports which  
23 overstated the number of panelists tested for SPF level in their  
24 sunscreen products.

25 THE COURT: Mr. Coffman, I think that clears it up.

1 MR. COFFMAN: Yes. Thank you, Your Honor.

2 THE COURT: Anything else that I need to elicit?

3 MR. COFFMAN: Not from the government's perspective.

4 THE COURT: Defense counsel, is there anything I need  
5 to elicit at this time?

6 MR. HAFETZ: No, Your Honor.

7 THE COURT: Defense counsel, do you know of any reason  
8 why the Court should not recommend that your client's plea of  
9 guilty be accepted?

10 MR. WEINBAUM: No, sir.

11 MR. HAFETZ: No, Your Honor.

12 THE COURT: Okay. Mr. Coffman, do you know of any  
13 reason why the Court should not recommend acceptance of these  
14 pleas?

15 MR. COFFMAN: No, Your Honor.

16 THE COURT: Mr. Letizia, in light of everything that's  
17 been said here today, is it still your wish to plead guilty to  
18 the charges set forth in the Felony Information?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Upon this allocution, I find  
21 that Gabriel Letizia, Jr. is fully competent, capable of  
22 entering an informed plea.

23 The plea is knowing and voluntary and supported by an  
24 independent factual basis for each and every element of the  
25 crimes charged.

1           Accordingly, I respectfully report and recommend to  
2 Judge Karas that the pleas be accepted and that Mr. Letizia be  
3 adjudged guilty of the offense charged in the Felony  
4 Information.

5           I direct the Probation Department to conduct a  
6 presentence investigation.

7           Mr. Letizia, this is important. Arrangements will be  
8 made for you to be interviewed by a probation officer. I am  
9 sure your attorneys will assist you in preparing for that  
10 interview. You are entitled to have your attorney present  
11 during the interview if you wish.

12           You must be fully honest and truthful during that  
13 interview because if Judge Karas learns that you have provided  
14 false, incomplete or misleading information, that could be held  
15 against you at the time of sentencing. Do you understand?

16           THE DEFENDANT: Yes, sir.

17           THE COURT: Mr. Coffman, the case summary should go to  
18 Probation within 14 days.

19           Counsel, you should make contact with Probation and  
20 arrange to make your client available for an interview during  
21 that interval.

22           I direct the reporter to provide a transcript of these  
23 proceedings within 30 days setting forth my report and  
24 recommendation to Judge Karas. That transcript should come to  
25 me for review.

1           Mr. Coffman, we can continue with existing bail  
2 conditions?

3           MR. COFFMAN: Yes, Your Honor.

4           THE COURT: Bail is continued. We will adjourn.

5           (Interruption)

6           THE COURT: Ms. Brown, do we have a date and time for  
7 sentencing from Judge Karas's chambers?

8           THE DEPUTY CLERK: Yes, we do. September 14, 2021, at  
9 2:00 p.m.

10          THE COURT: All right. Counsel should be in contact  
11 with Judge Karas's chambers as that date approaches to confirm  
12 the date and time of sentencing.

13          Is there anything else -- well, withdrawn.

14          Mr. Coffman, in accordance with Rule 5(f), I direct  
15 the prosecution to comply with its obligations under *Brady*  
16 *versus Maryland* and its progeny to disclose to defense all  
17 information, whether admissible or not, that is favorable to the  
18 defendant, material either to guilt or to punishment, and known  
19 to the prosecution.

20          Possible consequences for noncompliance could include  
21 dismissal of individual charges or the entire case, exclusion of  
22 evidence, and/or professional discipline or court sanctions on  
23 the attorneys responsible. I will enter a written order more  
24 fully describing these obligations and the possible consequences  
25 of failing to comply with them, and I direct the government to

1 review and comply with that order.

2 Mr. Coffman, can you confirm that the government is  
3 aware of its *Brady* obligations and will comply with them?

4 MR. COFFMAN: Yes. Thank you, Your Honor.

5 THE COURT: Anything else from the government?

6 MR. COFFMAN: No. Thank you, Your Honor.

7 THE COURT: Anything else from defense counsel?

8 MR. WEINBAUM: No, Your Honor.

9 MR. HAFETZ: No, sir.

10 THE COURT: Very well. We will stand in recess. Good  
11 luck to you, Mr. Letizia.

12 THE DEFENDANT: Thank you, sir.

13 MR. WEINBAUM: Thank you, Judge.

14 (Time noted: 1:26 p.m.)  
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